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EXAMINER

LAUX, JESSICA L

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/797,572
Filing Date: March 11, 2004
Appellant(s): WALSH, JOHN PETER

Joseph Berenato
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/22/2009 appealing from the Office action mailed 7/20/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6312540	MOYES	11-2001
2675338	PHILLIPS	4-1954

(9) Grounds of Rejection

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The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14, 27-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moyes (6312540) in view of Phillips (2675338).

Claims 1, 12-14, 27, 28, 31. Moyes disclose a method of forming a molded door skin comprising:

conditioning a board with water or steam (49; Col. 6, lines 43-61);

disposing the conditioned board in a mold press having a contoured mold cavity (21; Col. 7, line 64); and

deforming the board in the mold press using sufficient heat and pressure to form a molded door skin having contoured portions corresponding to said mold cavity (Col. 8m lines 26-36).

Moyes does not expressly disclose a plywood board having at least one ply of solid wood.

Phillips discloses a molded plywood door skin, where the plywood is free of a nonsolid mat (see figures and disclosure), where the board is disposed in a mold press under sufficient heat and pressure to deform the board.

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Phillips discloses that it is common and well known, even desired, to deform plywood boards into contoured door skins using a mold press. Phillips does not expressly disclose the material of the core of the board, however, it would have been obvious to modify the plywood material of Phillips to be a luan, natural wood and the core material to be MDF, shipboard, OSB, softboard, hardboard or particleboard as these are all common materials used in plywood and they are readily available and easily worked (reference applicant's specification page 2, line 18 and page 3, lines 1-10).

Moyes discloses a method of deforming wood composite blanks. Moyes does not restrict the wood material to just composite wood with a resin but throughout the disclosure it is stated "flat blank... preferably a wood composite" (as seen at least on Col. 5, lines 58-62). This certainly does not teach away from using, trying, or pursuing other materials in the process of Moyes. Throughout the disclosure of Moyes a "resin" is referred to however, one of ordinary skill in the art would understand that to be applying the example of a composite board made with resin and would not construe the disclosure to teach away from using other materials, but rather as showing how the process is suitable for also using a composite board comprising resin. Further plywood boards as claimed by applicant typically contain a core that may be made with resin (as noted above) and therefore one of skill would understand that a plywood board having a composite containing a resin or similar would have success being deformed and contoured in the molding process of Moyes.

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Therefore, at the time the invention was made it would have been obvious to one of ordinary skill in the art to try the molding process of Moyes on the board of Phillips (where Phillips is relied upon for the teaching of a plywood door skin that is capable of molded and not the specific molding process) to provide an improved molded door skin, as a person with ordinary skill has good reason to pursue the known options within his or her technical grasp. In turn, because the door skin as claimed has the properties predicted by the prior art, it would have been obvious to make the door skin using the above noted method.

Regarding claim 2: The method of claim 1, further comprising closing the mold press at a predetermined closure rate (Moyes - Col. 8, lines 26-36).

Regarding claim 3: Moyes in view of Phillips discloses the method of claim 2 above but does not expressly disclose that the closure rate is between about 3 mm per minute and about 7 mm per minute. However, Moyes does disclose that various closure rates are acceptable depending the specific features of the board. Further applicant has not disclosed that such a closure provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art furthermore would have expected applicant's claimed closure rate and that as disclosed by Moyes to perform equally well considering they both close the press at a constant predetermined rate. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the closure step of Moyes to be at a rate as claimed by applicant as such a modification appears to be a matter of mere design choice which fails patentably distinguish of the prior art of Moyes.

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Regarding claims 4-5,30, 33: The method of claim 1, wherein said conditioning of the plywood board comprises exposing the plywood board to steam in an atmospheric chamber (Moyes - Col. 6, lines 59-61); Moyes does not expressly disclose steaming in an atmospheric chamber or a pressurized sealed cavity however at the time of the invention, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have used a pressured chamber because applicant has not disclosed that the pressure provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the method taught by Moyes or the claimed pressured chamber because either method would perform the same function of conditioning the plywood board equally well. Therefore, it would have been an obvious matter of design choice to modify the steaming method of Moyes to obtain the invention specified in claims 4-5.

Regarding claims 6, 29, and 32: Moyes in view of Phillips discloses the method of claim 5, but does not expressly disclose that the plywood board is exposed to steam in the pressurized, sealed cavity for at least about 30 minutes during said conditioning step.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to steam the board for 30 minutes because applicant has not disclosed that such a limitation provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Moyes step of steaming, and applicant's

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invention to perform equally well with either the step of steaming taught by Moyes or the claimed step of steaming because both steps would perform the same function of moisturizing the board to an acceptable moisture content equally well.

Therefore, it would have been prima facie obvious to modify Moyes to obtain the invention as specified in claim 6 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Moyes.

Regarding claim 7: The method of claim 1, wherein said conditioning of the plywood board comprises soaking the plywood board in a water bath (Moyes - Col. 6, lines 43-61).

Regarding claim 8: Moyes in view of Phillips discloses the method of claim 7, but does not expressly disclose that the plywood board is soaked in the water bath for at least about 4 hours during said conditioning step.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to soak the board for 4 hours because applicant has not disclosed that such a limitation provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Moyes step of soaking, and applicant's invention to perform equally well with either the step of soaking taught by Moyes or the claimed step of soaking because both steps would perform the same function of moisturizing the board to an acceptable moisture content equally well considering.

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Therefore, it would have been prima facie obvious to modify Moyes to obtain the invention as specified in claim 8 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Moyes.

Regarding claims 9-10: Moyes in view of Phillips discloses the method of claim 1 and further using surfactants to achieve a desired moisture pick-up (Moyes - Col. 6, lines 54-56), but does not expressly disclose that the said conditioning step includes exposing the plywood board to a surface spray.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to condition the boards using a surface spray because applicant has not disclosed that such a limitation provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Moyes step of conditioning, and applicant's invention to perform equally well with either the step of conditioning taught by Moyes or the claimed step of conditioning because both steps would perform the same function of moisturizing the board to an acceptable moisture content equally well considering. Further applicant has disclosed in the specification and claims several different steps of conditioning to be acceptable (such as a water bath or steaming).

Therefore, it would have been prima facie obvious to modify Moyes to obtain the invention as specified in claims 9-10 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Moyes.

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Regarding claim 11: The method of claim 1, wherein said conditioning of the plywood board increases moisture content of the plywood board to between about 9-15% (which is between about 10-40% as applicant has claimed; (Moyes - Col. 6, line 49).

(10) Response to Argument

Appellant's argument that the artisan of ordinary skill would not have had a reasonable expectation of success that the molding process of Moyes could be successfully applied to the plywood materials of Phillips is not persuasive for the following reasons:

Wood composites include a range of derivative wood products which are made by a combination of wood strands, particles, fibers or veneers with adhesives. One such example of a wood composite is plywood and specifically the plywood as disclosed by Phillips.

The plywood of Phillips contains wood sheets and/or fibers contained in resin and an adhesive for post-forming (Col. 1, lines 30-44). Therefore in view of the disclosure of Phillips one of ordinary skill in the art would have expected predictable results from post-forming plywood and specifically the plywood of Phillips.

Moyes disclosure clearly provides for the use of wood composite materials therefore one of ordinary skill in the art would have expected any of the various known types of engineered wood composite products to be suitable with the method of Moyes as the distinctions between the known engineered products are primarily drawn to the

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composition of fiber and resin; and plywood is one of these known composites of engineered wood products.

Appellant's argument that the use of melamine or formaldehyde would spoil the plywood of Phillips is not persuasive as Phillips clearly discloses the use of a melamine and formaldehyde in the plywood (Col. 1, lines 35-40).

Appellant's argument that the closure rate and pressing times of Moyes would be too much for plywood is not persuasive as applicant's remarks amount to a mere allegation not supported by fact or evidence. Further, Phillips discloses a plywood board containing the same resins as Moyes and therefore one of ordinary skill in the art would have readily expected the closure rates and pressing times of Moyes to work with the board of Phillips. Additionally Moyes discloses in Col. 4, lines 26-40 that the rate of closure is a function of the hardness, density, density profile, depth of molding and percentage binder or resin content of the wood composite board used and therefore the closure rate would be a matter of design choice as the choice of composite board would effect the closure rate. As plywood is a type of wood composite, the closure rates and disclosure pertaining to closure rates in Moyes (particularly the teaching of design choice) would be suitable for use plywood.

Appellant's argument that Moyes teaches away from the use of a plywood is not persuasive as a plywood is a type of wood composite and Moyes clearly discloses the use of a wood composite.

Regarding Appellant's arguments as they pertain to the design choice rejection rationale, Appellant has not disclosed that that the use of a non-pressurized

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atmospheric chamber, a pressurized atmospheric chamber, a water bath, or spraying water provides an advantage over another method, or is used for a particular reason, or solves a stated problem. Rather Appellant discloses in the specification on Page 9, line 17 that various method of conditioning the board maybe used. Therefore it appears to be a mere matter of obvious design choice which fails to patentable distinguish over the prior art.

Appellant's arguments that Moyes does not disclose soaking the board in a water bath are not persuasive as Col. 6 of Moyes clearly discloses conditioning the board by the application of water (i.e. a water bath).

Appellant's arguments regarding claim 11 are not persuasive as the prior art reference of Moyes clearly a moisture content within the claimed range and therefore anticipates the claim.

Phillips clearly discloses a plywood blank comprised of veneer layers of solid wood and an interior core. One of ordinary skill in the art would have been motivated to try or use any of the known wood or wood composite materials for the core layer and would have expected predictable results from such a use based on the disclosure of Moyes and that which is known in the art (based on Appellant's disclosed background information).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

/Jessica Laux/

Examiner, Art Unit 3635

/Richard E. Chilcot, Jr./

Supervisory Patent Examiner, Art Unit 3635

Conferees:

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